

1  
2  
3  
4  
5  
6  
7  
8  
9  
10 DANA SCOTT KRULEE,  
11 Plaintiff,

12 v.

13 RECEIVABLES PERFORMANCE  
14 MANAGEMENT, LLC, et al.,  
15 Defendants.

Case No. 5:14-cv-02860-RMW

**ORDER DENYING MOTION FOR  
ATTORNEY'S FEES**

Re: Dkt. No. 83

16 Plaintiff Krulee filed this purported class action asserting claims against defendants under  
17 the Fair Debt Collection Practices Act, 15 U.S.C. §1692 *et seq.* (“FDCPA”). *See* Dkt. No. 1.  
18 Krulee’s claims arise out of defendants’ communications attempting to collect Krulee’s delinquent  
19 credit card account that originated with First National Bank of Omaha (“FNBO”). *Id.* Receivables  
20 Performance Management, LLC (“RPM”) and Jefferson Capital Systems, LLC (“Jefferson  
21 Capital”) (collectively “defendants”), assignees of plaintiff’s credit card account, filed a motion  
22 pursuant to the Federal Arbitration Act, 9 U.S.C. §§ 1, *et seq.* (“FAA”), to compel arbitration. Dkt.  
23 No. 50. The court granted the motion to compel arbitration, and dismissed the case “without  
24 prejudice to proceed with the arbitration and without prejudice to an action confirming the  
25 arbitration award.” Dkt. No. 81. Defendants now move for attorney’s fees. Dkt. No. 83.

26 **I. LEGAL STANDARD**

27 The Supreme Court has held that “[u]nder the bedrock principle known as the ‘American  
28 5:14-cv-02860-RMW  
ORDER DENYING ATTORNEY'S FEES

1 Rule,’ each litigant pays his own attorney’s fees, win or lose, unless a statute or contract provides  
2 otherwise. Notwithstanding the American Rule, however, we have long recognized that federal  
3 courts have inherent power to award attorney’s fees in a narrow set of circumstances, including  
4 when a party brings an action in bad faith.” *Marx v. Gen. Revenue Corp.*, 133 S. Ct. 1166, 1175  
5 (2013) (alterations and citations omitted). Here, defendants rely on the existence of a contract,  
6 specifically the Terms and Conditions accompanying plaintiff’s credit card account, to support an  
7 award of fees.

8 **II. ANALYSIS**

9 The provision by which defendants seek fees applies to attorney’s fees “related to the  
10 collection of your account.” Dkt. No. 51-1 at 17. However, plaintiff in bringing his FDCPA claim  
11 did not seek a declaration that he does not owe the amount that was due on his account or assert  
12 any claim that the defendants’ alleged violation of the FDCPA was a defense to any claim for the  
13 amount due on his credit card account. Therefore, the attorney’s fees defendants seek are not  
14 related to the collection of plaintiff’s account.

15 The relevant provision concerning attorneys’ fees in the Terms and Conditions is in the  
16 Arbitration Provision (Agreement to Arbitrate Claims). That provision states:

17 Any claim, dispute or controversy (whether in contract, tort or  
18 otherwise) at any time arising from or relating to your Account, any  
transferred balances or this Agreement (collectively, Claims), upon  
the election of you or us, will be resolved by binding arbitration . . . .

19 *Id.* at 13. The Arbitration provision further provides that “each party will bear the expense of their  
20 respective attorneys’, experts’, and witness fees, regardless of which party prevails in the  
21 arbitration.” *Id.* Defendants successfully invoked the Arbitration Provision to obtain an order  
22 requiring arbitration. Since defendants elected to require plaintiff to arbitrate his FDCPA claim,  
23 the attorneys’ fees defendants incurred in obtaining the order requiring arbitration are  
24 appropriately governed by their agreement that each side bear its own attorney’s fees.  
25 Accordingly, the court DENIES the motion for attorney’s fees.

26 **IT IS SO ORDERED.**

United States District Court  
Northern District of California

1 Dated: August 3, 2015  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

  
Ronald M. Whyte  
United States District Judge